

**TOWN OF ORANGETOWN
WORKSHOP/PUBLIC HEARING
TUESDAY, FEBRUARY 6, 2018**

This meeting was opened at 8:00 p.m. Supervisor Day presided and Charlotte Madigan, Town Clerk, called the roll. Present were:

Supervisor Chris Day
Councilman Denis Troy
Councilman Thomas Diviny
Councilman Paul Valentine
Councilman Gerald Bottari

Also present:

Amanda Hyland, Supervisor's Confidential Assistant
Charlotte Madigan, Town Clerk
Joseph Thomassen, 1st Deputy Clerk/Collector
John Edwards, Town Attorney
Teresa Kenny, Deputy Town Attorney
Jeff Bencik, Finance Director
James Dean, Superintendent of Highways
Jane Slavin, Director of OBZPAE
Joseph Moran, Commissioner of DEME
Aric Gorton, Superintendent of Parks, Recreation & Building Maint.
Kevin Nulty, Police Chief

Pledge of Allegiance to the Flag of the United States of America: Town Board

Clara Reichert, Keri Mc Aleer, Ashley Harrington, Erin Mc Cabe, Lisa Gallagher, Julia Branzetti, and Caroline Reichert, Troop Leader of Girl Scout Troop #40125 were presented with Certificates of Recognition for their volunteer work at the Conway House.

Wilbur T. Aldridge and Frances Pratt received a Proclamation, on behalf of Orangetown, recognizing their contributions to the NAACP and declaring February 2018 Black History Month, in Orangetown. Supervisor Phillips, Haverstraw, also congratulated Wilbur and Frances.

The Town Board took a 10 minute recess.

RESOLUTION NO. 55

**CONTINUE PH/ PROPOSED LOCAL
LAW AMENDING CODE §6-5,
CHAPTER 6, BUILDING
CONSTRUCTION ADMINISTRATION;
ZONING CODE CHAPTER 43 §4.11,
§4.12 AND §4.13 PERFORMANCE
STANDARDS, §10.222, §10.323, §10.334
AND §10.335, ADMINISTRATION AND
ENFORCEMENT**

Supervisor Day offered the following resolution, which was seconded by Councilman Diviny was unanimously adopted:

RESOLVED, that the Public Hearing, to consider the adoption of a Local Law amending the Code of the Town of Orangetown, Chapter 6, entitled Building Construction Administration, §6-5; and Chapter 43, entitled Zoning, Article IV, §4.1, entitled Performance Standards, and §4.11, §4.12 and §4.13 thereof, and Article X, entitled Administration and Enforcement, §10.222, §10.323, §10.334 and §10.335; is hereby open.

Ayes: Supervisor Day
Councilpersons Diviny, Troy, Valentine, Bottari
Noes: None

Charlotte Madigan presented the Affidavit of Publication and Notice of Posting; copies are labeled Exhibit 01-B-18 and made a part of these minutes.

Summary of Public Comments:

John Curran, Attorney for Aluf Plastics, submitted comments letters (Exhibit 01-C-18). The proposed amendments fall far short of the mark of establishing a fair, workable and effective enforcement regime.

Allyson Sullivan, Blauvelt, asked who will be tracking the odors, inspecting the facilities and enforcing this new Code.

Heather Hurley, Pearl River, Who determines whether it is steam or water vapor; Does this include research and development facilities; how are after hour complaints going to be handled?

Sander Bonvell, Environmental Chemist with Med Air Associates, representing Orangetown said the original idea was to update the Performance Standards. This is the first draft and will be added too.

PROPOSED LOCAL LAW
AMENDING CHAPTER 6, BUILDING CONSTRUCTION ADMINISTRATION, §6-5;
CHAPTER 43, ENTITLED ZONING, ARTICLE IV, §4.1, PERFORMANCE
STANDARDS, §4.11, §4.12 §4.13, AND ARTICLE X, ADMINISTRATION AND
ENFORCEMENT, §10.222, §10.323, §10.334 & §10.335.

Be it enacted by the Town Board of the Town of Orangetown as follows: Section 1:

Purpose: The Town Board (“Board”) of the Town of Orangetown, New York (“Town”) hereby finds that there is a critical and compelling need, in the public interests as set forth herein, to protect the health, safety and welfare of its residents to ensure that properties do not emit or cause to be emitted dangerous or objectionable levels of smoke, particulate matter, and odor. The objective of this local law is to clarify Chapter 43 (Zoning) § 4.163, § 4.164, and § 4.182 of the Code of the Town of Orangetown (“Orangetown Code”), relating to emissions, and to make related enforcement, procedural and administrative changes, including changes to Chapter 6 (Building Construction Administration).

Section 2: Chapter 6 (Building Construction Administration), § 6-5, of the Orangetown Code shall be amended, and, as amended shall read as follows:

§ 6-5 Duties and powers of the Building Inspector.

* * *

B. The Building Inspector shall receive applications and issue permits for the erection, alteration, removal and demolition of buildings or structures or parts thereof, and shall examine the premises for which such applications have been received or such permits have been issued for the purpose of insuring compliance with laws, ordinances and regulations governing building construction.

C. The Building Inspector shall issue all appropriate notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during construction and to insure compliance during the entire course of construction with the requirements of such laws, ordinances or regulations. The Building Inspector shall make all inspections which are necessary or proper for the carrying out of his duties, except that he may accept written reports of inspection from Building Inspectors, or other employees, of the Building Department Town of Orangetown’s (hereinafter referred to as “Orangetown”) Office of Building, Zoning and Planning Administration and Enforcement (hereinafter referred to as “OBZPAE”), or from generally recognized and authoritative reputable service and inspection bureaus, provided the same are certified prepared and signed by a qualified professional responsible official thereof.

D. Whenever the same may be necessary or appropriate to assure compliance with the provisions of applicable statutes, codes, laws, ordinances or regulations covering relating to building construction, he the Building Inspector may require the performance of tests in the field, or on-site of private property subject of a building permit application, by experienced, qualified professional(s) persons, or by accredited and authoritative reputable testing laboratories, or service bureaus or agencies.

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E. Whenever the same may be necessary or appropriate to assure compliance with the provisions of applicable statutes, codes, laws, ordinances or regulations relating to the use, maintenance or occupancy of land or buildings, including, but not limited to, assuring compliance with the Performance Standards set forth in §4.1 of Chapter 43 (Zoning Code) of the Orangetown Code, and/or to assure compliance with the conditions of any applicable Orangetown land use board approval decisions, the Building Inspector may inspect, investigate and/or conduct tests, on-site of private property subject of a building permit application, which may include, with regard to the Performance Standards, inspecting, investigating and/or conducting tests while all mechanical equipment, machinery, installations and systems, that are appurtenant to the use that is subject to the Performance Standards, are in full operation. For purposes of said inspections, investigations and/or tests, the Building Inspector may engage, employ or retain the services of the Orangetown Department of Environmental Management and Engineering (hereinafter referred to as “DEME”), and/or expert consultants, to the extent, type and/or degree that the Building Inspector, DEME, and/or the expert consultants, deems necessary.

(i). If, as a result of the Building Inspector’s said inspection, investigation and/or testing, relating to an alleged violation of, or non-compliance with, the Performance Standards (Zoning Code §4.1) on the part of any nonresidential use subject to the Performance Standards (hereinafter referred to as “industrial user”), the Building Inspector has reasonable grounds to believe that a violation, or non-compliance, exists, the Building Inspector shall notify the Zoning Board of Appeals of the occurrence or existence of such possible violation, or non-compliance, in accordance with Zoning Code §10.335.

(ii). If, after public hearing on due notice, in accordance with Zoning Code §4.13, the Zoning Board of Appeals finds that a violation, or non-compliance, occurred or exists, and revokes and rescinds its Performance Standards (Zoning Code §4.1) approval decision, then the Building Inspector may revoke and rescind any Building Permit and/or Certificate of Occupancy that had been issued based upon such approval decision.

Section 3: Chapter 43 (Zoning) §4.1 Performance Standards shall be amended, and, as amended shall read as follows:

§ 4.1. Performance standards.

All references herein contained to certain standards which indicate a publisher and date are hereby deemed to mean the latest revised edition of such standard. Where a federal, state, county or local agency promulgates standards which are inconsistent with, or different from, those herein enumerated, the more restrictive standards shall control. Unless otherwise stated, all citations to statutory sections (“§”) are from Chapter 43, the Zoning Code, of the Code of the Town of Orangetown (hereinafter referred to as “Orangetown” and “Zoning Code”).

4.11. Applicable to all nonresidential uses. No land or building shall be used or occupied for a nonresidential use in any manner as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosive, radioactive or other hazard; noise or vibration; smoke, dust, odor or other form of air pollution; electrical or other disturbance; glare; liquid or solid refuse or wastes; a condition conducive to the breeding of rodents or insects or other substance, condition or element, all referred to herein as “dangerous or objectionable elements,” in a manner or amount as to adversely affect the surrounding area. However, any nonresidential use, except those expressly prohibited by this code in §4.4, may be undertaken, and maintained, if it conforms to the district regulations, and the regulations of §4.1, performance standards, limiting dangerous and objectionable elements at the point of determination of their existence as provided in this section §4.1.

4.12. Performance standards procedure. Only those uses specified in the Zoning Code Use Table, Columns 2, 3 and 4, as are subject to the performance standards procedure of §10.334, §4.12, are subject to performance standards procedure requiring the Orangetown Zoning Board of Appeals’ (hereinafter referred to as “ZBA”) approval as specified in §10.334 in obtaining a building permit or certificate of occupancy, or both

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(hereinafter referred to as “industrial user”), unless the Building Inspector has reasonable grounds to believe that any other proposed use, including any building or use accessory to a use subject to performance standards procedure, is likely to violate performance standards, in which event the applicant industrial user shall comply with the procedure in §10.334 in obtaining a building permit or certificate of occupancy, unless the ZBA Board of Appeals finds that compliance therewith is unnecessary.

4.13. Initial, and continued, enforcement provisions. Whether or not compliance with performance standards procedure in §10.334, in obtaining a building permit or certificate of occupancy, is required for any particular use,

(a). Initial, and continued, compliance with performance standards is required of every new nonresidential use, or change in such use, including, but not limited to, §10.231(c), in all Zoning Districts, as provided in §10.335, for all nonresidential uses that are subject to §4.1. Pursuant, but not necessarily limited, to §4.13, §10.334(c) and §10.335, initial, and continued, compliance with the performance standards (§4.1) is required, and all building permits and certificates of occupancy, issued for a use subject to §4.1, is conditioned, and contingent, upon the industrial user conforming to the performance standards, and the industrial user’s paying of the fees, to the Town of Orangetown, for services of Orangetown’s own expert consultants deemed reasonable and necessary by Orangetown’s Department of Environmental Management and Engineering (hereinafter referred to as “DEME”), Orangetown’s Office of Building, Zoning and Planning Administration and Enforcement (hereinafter referred to as “OBZPAE”), and/or the ZBA, for said consultants’ inspections, investigations, research, studies, tests, advice and/or reports relating to determining compliance with the industrial user’s conformance to the performance standards (§4.1).

(b). The industrial user’s initial, and continued, compliance with the performance standards (§4.1) shall include the following:

(i). Inspections, investigations and/or testing, on the industrial user’s site, while all mechanical equipment, machinery, installations and systems, that are appurtenant to the use that is subject to the performance standards (§4.1), are in full operation, by OBZPAE, DEME, and/or the Orangetown-retained expert consultants, to the extent, type and/or degree that OBZPAE, DEME, and/or the Orangetown-retained expert consultants, deem necessary.

(ii). The industrial user’s full, and complete, compliance with any and all laws, statutes, rules and regulations of the NYS Department of Environmental Conservation and federal Environmental Protection Agency, that also regulate the use that is subject to the performance standards (§4.1).

(iii). OBZPAE, DEME, and/or the Orangetown-retained expert consultants, shall investigate any alleged violation of, or non-compliance with, the performance standards (§4.1) by the industrial user, as per §4.13(b)(i); and, if there are reasonable grounds to believe that a violation, or non-compliance, exists, OBZPAE, DEME, and/or the Orangetown-retained expert consultant(s), shall notify the ZBA, in writing, of the occurrence, or existence, of a probable violation, or non-compliance, thereof. Upon receiving such notification, the ZBA may further investigate the alleged violation or non-compliance, if the ZBA deems it necessary in its discretion; and, for such further investigation, the ZBA may utilize, or retain, the services of OBZPAE, DEME, and/or the Orangetown- retained expert consultants. Thereafter, after holding a Public Hearing on due notice, including notice to the industrial user (except for posting of signs at the industrial user’s subject site, which signs shall not be required), the fees for which Public Hearing shall be paid for by the industrial user, if the ZBA finds that a violation, or non-compliance, occurred or exists, the ZBA may revoke and rescind its performance standards (§4.1) approval decision, and any building permit and/or certificate of occupancy that has been issued, based upon such approval decision, shall also be deemed revoked and rescinded; which shall be in addition to any other legal remedies that the Town of Orangetown may pursue, including, but not necessarily limited to, prosecution of violations in the Orangetown Justice Court pursuant to §10.2 and/or §10.6, and/or

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commencement of a civil action or proceeding in the NYS Supreme Court, pursuant to NYS Town Law §135(1) and/or §268(2).

* * *

4.163. Smoke. There shall be no emission and/or discharge into the atmosphere at any point from any chimney, stack, vent or otherwise, of visible black, gray or white smoke other than that caused by steam, of a shade darker than No. 1 on the Ringelmann Smoke Chart as published by the United States Bureau of Mines (Power's Micro-Ringelmann Chart, McGraw Hill Publishing Company, 1954, may be used), except that visible gray smoke of a shade not darker than No. 2 on said chart may be emitted for not more than four minutes in any 30 minutes. These provisions, applicable to visible gray smoke, shall also apply to visible smoke of a different color but with an equivalent apparent opacity., or exhibiting greater than 20 percent opacity (6-minute average) per EPA Method 9,.

Exceedance during two consecutive days requires the opacity producer to conduct EPA Method 9 analysis within two business days of occurrence – or evaluate Continuous Opacity Monitoring System(s) (COMS) during the same period. - and Aa facility-responsible person must notify the Town within one business day of receiving the assessment results, as well as provide any other credible evidence. The Town will evaluate compliance and determine further action.

4.164.(a) Fly ash, dust, fumes, vapors, gases and other forms of air pollution derived from combustion. There shall be no emission and/or discharge which can any cause damage to the health, to of humans or other animals, or vegetation, buildings or structures, or other forms of property, or which can cause any excessive soiling. of any point and in no event any emission from any chimney or otherwise of any solid or liquid particles in concentrations exceeding 0.3 grains per cubic foot of the conveying gas or air at any point. For measurement of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of 500° F. and 50% excess air.

Emissions related to combustion must comply with the standards and regulations set forth in the New York State Department of Environmental Conservation's 6 NYCRR Subpart 227-1, Stationary Combustion Installations, as amended and/or supplemented from time to time, as applicable.

4.164.(b) Ash, dust, fumes, vapors, gases and other forms of air pollution not derived from combustion. There shall be no emission and/or discharge which can cause any damage or injury to the health of humans and other animals, or vegetation, buildings or structures or other forms of property, or which can cause excessive soiling.

Emissions of air contaminants to the outdoor atmosphere from any process emission source or emission point are restricted in accordance with the New York State Department of Environmental Conservation's 6 NYCRR Subpart 212, Process Operations, as amended and/or supplemented from time to time, as applicable.

* * *

4.181. Noise. At the specified points of measurement, The the sound-pressure level of noise radiated continuously from a facility at nighttime shall not exceed the values given in Table I in any octave band of frequency., in order to provide an environment free from noise that affects people's well-being and use, enjoyment and value of property, or that interferes with the repose of life, or would unreasonably or unnecessarily interfere with public health, safety, and welfare.

In the event of noise complaints arising from residents, commercial, or other Town inhabitants, the The sound-pressure level shall be measured with a sound-level meter and an octave band analyzer that conforms to specifications published by the equipment manufacturers, and such standards as published by the American National Standards

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Institute (ANSI), the American Society for Testing and Material, or other contemporary standards-establishing organization accepted in the United States. by the American Standards Association. (American Standard Sound Level Meters for Measurement of Noise and Other Sounds, Z24.3-1944, American Standards Association, Inc., New York, New York, and American Standard Specification for an Octave- Band Filter Set for the Analysis of Noise and Other Sounds, Z24.10-1953, American Standards Association, Inc., New York, New York, shall be used.)

Unless otherwise resolved with the Town, the owner or operator of the location/source of such elevated, complaint-producing noise, shall prepare and provide a Noise Monitoring Plan to the Town within 10-business days of written notice by the Town, and such Plan shall be implemented within 10-business days of Plan approval by the Town, and the written report of such monitoring shall be provided to the Town within 10-business days following completion of noise monitoring. Failure to meet noise compliance will result in cessation of the offending noise source until compliance is met. The Noise Monitoring Plan will employ “A-weighting” unless another weighting scale is more appropriate, and shall address:

- i) The number and location of monitoring sites;
- ii) The timing and frequency of surveys;
- iii) Methods and standards to be followed. This will include methods used to identify and remove measurement results for time periods affected by sound associated with any temporary events or activities (such as noise from non- related construction or other activities), and during periods where wind speeds exceed 5 m/s or the rainfall rate exceeds 6 mm/hour; and
- iv) Timeframes for monitoring and reporting to the Town in the event they are otherwise than stated in this Performance Standard.

TABLE I

Maximum permissible sound-pressure levels at specified points of measurement for noise radiated continuously from a facility between the hours of 10:00 p.m. and 7:00 a.m.
 Frequency Band Cycles per second Sound Pressure Level Decibels

‘A-weighted’ scale (dBA) *
 Re. 0.002 dyne/cm.2

20-75	69
75-150	54
150-300	47
300-600	41
600-1200	37
1200-2400	34
2400-4800	31
4800-10,000	28

* ‘A-weighted’ scale (dBA) is the filtering of sound measurement to account for the perceived loudness of noise not necessarily correlating with sound levels. Sound level meters set to A-weighting minimize low-frequency noise similar to the human ear, Sound intensity is measured in units of decibels, dB.

If the noise is not smooth and continuous and is not radiated between the hours of 10:00 p.m. and 7:00 a.m., one or more of the corrections in Table II below shall be added to or subtracted from each of the decibel levels given above in Table I.

TABLE II

Type of Operation of Character of Noise Correction in Decibels
Daytime operation only Plus 5
Noise source operates less than 20% of any one hour Plus 5*
Noise source operates less than 5% of any one-hour period Plus 10* Noise source operates less than 1% of any one-hour period Plus 15*
Noise of impulsive character (hammering, etc.) Minus 5
Noise of periodic character (hum, screech, etc.) Minus 5

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* Apply one of these corrections only.

4.182. Odors. No emission of odorous gases or other odorous matter in such quantities as to be offensive at the specified points of measurement. Any process which may involving the creation or emission of any odors shall be provided with a secondary safeguard system, so that control will be maintained if the primary safeguard system should fail. There is hereby established, as a guide in determining such quantities of offensive odors, Table III (Odor Thresholds) in Chapter 5, Air Pollution Abatement Manual, Copyright 1951 by Manufacturing Chemists' Association, Inc., Washington, D.C.

No person, entity or process will emit, or cause or allow to be emitted, There shall be no emission and/or discharge of objectionable odors or other matter present in the ambient air that, by itself or in combination with other odors, gases or vapors is offensive, foul, unpleasant or repulsive to olfactory reception, beyond the property borders of the emitting source.

Odor(s) will be deemed objectionable when documented assessment by the Town shows evidence that the odor likely could, or does, cause injury, detriment, nuisance or annoyance to persons or to the public, based on observations of the odor’s nature, intensity, duration, location, and level of complaint.

Upon documented assessment by the Town of the existence of an objectionable odor the Town will notify the odor producing facility and direct that an Odor Control Plan acceptable to the Town be submitted that outlines the operational cause of the violation, chemistry of the offending odor(s), literature evidence of odor thresholds and impacts, methods proposed to mitigate the problem, and the schedule by which the Plan will be implemented and completed.

To enforce this Performance Standard, objectionable odors will be considered detected and a violation of this Section 4.182 when either:

(i) A Town inspector/code enforcement officer detects an objectionable odor;
or

(ii) The Town receives initially five (5) or more complaints from individuals, households or businesses within seven (7) days, or fifteen (15) or more complaints within a 30-day period. The Town’s odor complaint records will include:

- a) Name, address, email and phone number of complainant.
 - b) Time and date of call.
 - c) Description of nuisance odor.
 - d) Estimated location or source of complaint.
 - e) If possible, prevailing wind or weather conditions observed
 - f) If OBZPAE or DEME finds noncompliance, as per above (first bullet), then there shall be deemed noncompliance; and
- (iii) One (1) volume of the odorous air has been diluted with up to five (5) volumes of odor-free air and the odor is still perceptible, as measured by the Town through the use of reliable olfactometer field instruments, devices, or methods; and
Section 4: Chapter 43 (Zoning) § 10.2 Enforcement shall be amended, and, as amended shall read as follows:

* * *

10.222. Permits granted only in conformance with regulations.

A. No permit shall be issued unless the proposed construction of and use is are in full conformity with all the provisions of this this Zoning Code, and all other applicable land use and/or building statutes, codes, laws, ordinances or regulations. Any permit issued in violation of the provisions of this Zoning Code shall be null and void, and of no effect, without the necessity of any proceedings for revocation or nullification thereof, and any work undertaken, or use established, pursuant to any such permit shall be unlawful.

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B. After the effective date of this this Zoning Code, division of any parcel of land shall conform to all the applicable bulk regulations, except as permitted under §5.21 of this Code.

C. The Inspector may revoke a permit theretofore issued, and approved, in the following instances:

(ai) Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans, drawings, plat or specifications on which the permit was based;

(bii) Where he finds that the permit was issued in error, and should not have been issued in accordance with the applicable law(s);

(ciii) Where he finds that the work performed under the permit is not being prosecuted conducted in accordance with the provisions of the application, plans, drawings, plat or specifications; or

(div) Where the person to whom a permit has been issued fails or refuses to comply with a stop order issued by the Inspector.;

(v) Where he finds that the conditions of any applicable Orangetown land use board approval decisions have not been complied with.

D. Whenever the Inspector has reasonable grounds to believe that work on any land, building or structure is being prosecuted conducted in violation of the provisions of the any applicable land use and/or building statutes, codes, laws, ordinances or regulations, or not in conformity with the provisions of an application, plans, drawings, plat or specifications, or the conditions of any applicable Orangetown land use board approval decisions, on the basis of which a permit was issued, or in an unsafe and dangerous manner, he the Inspector shall notify the owner of the property, or the owner's agent, or the person performing the work, to suspend all work, and any such persons shall forthwith stop such work, and suspend all building activities, until the stop order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed, and may be served upon a person to whom it is directed either by delivering it personally to him, or by posting the same upon a conspicuous portion of the building under construction and sending a copy of the same by certified mail U.S. Postal Service First Class Mail.

E. If, after holding a Public Hearing on due notice, in accordance with Zoning Code §4.13, the Orangetown Zoning Board of Appeals finds that a violation of, or non-compliance with, the Performance Standards (Zoning Code §4.1) occurred or exists, and revokes and rescinds its Performance Standards approval decision, then the Building Inspector may revoke and rescind any Building Permit and/or Certificate of Occupancy that had been issued based upon such approval decision, in accordance with Zoning Code §4.13(b)(iii).

Section 5: Chapter 43 (Zoning) § 10.3 Board of Appeals shall be amended, and, as amended shall read as follows:

* * *

10.323. Findings and conclusions. After such public hearings, the Orangetown Zoning Board of Appeals (hereinafter referred to as "ZBA") shall make written findings of fact and conclusions concerning the subject matter of such hearing, including the reasons for the grant or denial of the relief sought. As to any proposed use, such findings of fact and conclusions shall be made concerning such use, as described and represented by the applicant. In addition, the ZBA Board of Appeals shall, in appropriate cases, impose additional conditions and safeguards in granting a special permit or variance, or in approving an application requesting approval of conformance to the performance standards (Zoning Code §4.1), in harmony with the general purpose and intent of the Zoning Code, and to ensure that such use is established and maintained in conformity with the special findings, and the additional requirements and conditions, upon which

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such permit, variance(s) or approval of conformance to performance standards (Zoning Code §4.1), is granted.

* * *

10.334. Permit for a use subject to performance standards procedure.

(a) Application. An application for a permit for a use subject to performance standards procedure shall be submitted to the Inspector in quadruplicate on a form prescribed by the Zoning Board of Appeals (hereinafter referred to as “ZBA”), which shall include, but not be limited to, a Resume of Operations, on a form prescribed by the ZBA, which shall be prepared, and signed, by a person who is qualified to answer the questions and submit documentation on behalf of the applicant; and shall be referred by the Inspector to the ZBA Board of Appeals. The ZBA may reject the Resume of Operations if the ZBA determines that it has not been prepared, and signed, by a qualified person, regarding which the ZBA may engage or retain expert consultants to advise the ZBA with respect to the qualifications of the preparer/signatory, the fees of which consultants shall be paid by the applicant. The applicant shall also submit in duplicate a plan of the proposed construction or development, including a description of the proposed machinery, operations, and products and specifications for the mechanism and techniques to be used in restricting the emission of dangerous and objectionable elements referred to in §4.1, in accordance with rules prescribed by the ZBA Board specifying the type of information required in such plans and specifications, and an affidavit by the applicant acknowledging his understanding of the applicable performance standards and agreement to conform with same at all times. No applicant will be required to reveal any secret processes, and any information submitted will be treated as confidential, if requested by the applicant. The fee for such application shall include the anticipated estimated costs of the special the ZBA’s expert consultants’ reports required to process it, described in Subsection (b) below.

(b) Report by expert consultants. The Board of Appeals, if there is the ZBA has any reasonable doubt as to the likelihood of conformance to the performance standards, the ZBA shall refer the application, for investigation and report, to one or more expert consultants selected by the ZBA Town Board as qualified to advise as to whether a proposed use will conform to the applicable performance standards specified in §4.1, in accordance with §4.13. The applicant shall be informed of the estimated costs for such investigation and report before such referral is made. Such consultant or consultants shall make such report within 30 days after his or their receipt of such application. A copy of such report shall be promptly furnished to the applicant.

(c) Decision of the Board of Appeals. At the next regular meeting of the ZBA Board of Appeals, but in no event more than 30 62 days after the ZBA Board has received the aforesaid expert consultants’ report(s) and after the closing of the Public Hearing, or within such further period as agreed to by the applicant and ZBA, the ZBA Board shall decide whether the proposed use will conform to the applicable performance standards and, on such basis, shall authorize or refuse to authorize the issuance of a permit or certificate of occupancy or require a modification of the proposed plan of construction. Such decision of the ZBA Board shall be in written the form of a written report, which shall be immediately filed in the office of the Orangetown Town Clerk and shall be a public record. Any permit or certificate of occupancy issued by the Inspector shall be conditioned on, among other things, the applicant’s completed buildings, structures, and installations, machinery, equipment and appurtenances, in operation, conforming to the applicable performance standards, and the applicant’s paying the fees for services of the expert consultant, or consultants, deemed reasonable and necessary by the ZBA Board of Appeals for advice as to whether or not the applicant’s completed buildings, structures, and installations, machinery, equipment and appurtenances will, in operation, conform to the applicable performance standards.

10.335. Continued enforcement.

A. The Inspector shall investigate any alleged violation of, or non-compliance with, the performance standards (Zoning Code §4.1) on the part of any nonresidential use subject to the performance standards (hereinafter referred to as “industrial user”); and, if there are reasonable grounds to believe that a violation, or non-compliance, exists, he the Inspector shall notify the ZBA Board of Appeals of the occurrence or existence of a probable such possible violation or non-compliance thereof. The ZBA Board shall

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investigate the alleged violation, or non-compliance, in accordance with Zoning Code §4.13, and for such investigation may employ engage or retain qualified experts. If, after public hearing on due notice, in accordance with Zoning Code §4.13, the ZBA Board of Appeals finds that a violation, or non-compliance, occurred or exists, a copy of said findings shall be forwarded to the Inspector; and, in addition thereto, the ZBA may revoke and rescind its performance standards (Zoning Code §4.1) approval decision, and any building permit and/or certificate of occupancy that has been issued, based upon such approval decision, shall also be deemed revoked and rescinded Town Board. The services of any qualified experts, employed retained or engaged by the Town ZBA to investigate and report regarding an alleged advise in establishing a violation of, or non-compliance with, the performance standards, in accordance with Zoning Code §4.13, shall be paid for by the industrial user violator, if a violation, or non-compliance, is proved found by the ZBA, and otherwise by the Town. No new certificate of occupancy shall be issued, as provided in §10-236, unless such charges have been paid to the Town.

B. (i). Each and every year, beginning on a date that is between eleven and twelve months after the issuance of a certificate of occupancy that was issued pursuant to Zoning Code §4.1, every industrial user shall submit an affidavit to the Inspector, sworn to and signed, under oath, by a qualified professional, attesting that the operations, processes and methods, and the completed buildings, structures, installations, machinery, equipment and appurtenances, that were approved by the ZBA as part of a performance standards application, have not been altered, modified or changed, in any manner whatsoever, other than routine maintenance. If the Inspector determines that the said affidavit has not been executed by a qualified professional, the Inspector may reject the affidavit, or may engage or retain expert consultants to advise the Inspector with respect to the qualifications of the signatory, the fees of which consultants shall be paid by the industrial user.

(ii). If the operations, processes or methods, or the completed buildings, structures, installations, machinery, equipment or appurtenances, that were approved by the ZBA as part of a performance standards application, have been altered, modified or changed, in any manner whatsoever, other than routine maintenance, then the industrial user shall submit, to the Inspector, a new Resume of Operations, in form and substance as described in §10.334(a); and, in addition, the industrial user shall apply for performance standards approval, as per Zoning Code §4.1, if determined to be necessary by the Inspector. In making such determination, the Inspector may engage or retain expert consultants to advise the Inspector with respect to such alterations, modifications or changes, the fees of which consultants shall be paid by the industrial user.

Section 6: This local law shall become effective immediately upon filing with the Secretary of State.

RESOLUTION NO. 56

CONTINUE PH/PROPOSED LOCAL LAW/AMENDING CODE §6-5 CHAPTER 6, BUILDING CONSTRUCTION ADMINISTRATION; ORANGETOWN ZONING CODE CHAPTER 43 §4.11, §4.12, §4.13 PERFORMANCE STANDARDS, §10.222, §10.323, §10.334 §10.335 ADMINISTRATION & ENFORCEMENT

Supervisor Day offered the following resolution, which was seconded by Councilman Troy was unanimously adopted:

RESOLVED, that the public portion is hereby continued to the RTBM of April 10, 2018 at 8:25 pm.

Ayes: Supervisor Day
Councilpersons Troy, Diviny, Valentine, Bottari
Noes: None

RESOLUTION NO. 57

**NOTICE OF INTENTION TO DECLARE
SEQRA LEAD AGENCY /AMENDING
ORANGETOWN CODE §6-5 CHAPTER
6, BUILDING CONSTRUCTION
ADMINISTRATION; AND ZONING
CODE CHAPTER 43 §4.11, §4.12 AND
§4.13 PERFORMANCE STANDARDS,
AND §10.222, §10.323, §10.334 §10.335
ADMINISTRATION AND
ENFORCEMENT**

Councilman Valentine offered the following resolution, which was seconded by Councilman Bottari was unanimously adopted:

RESOLVED, that in considering adoption of text amendments to: (a) Orangetown Code §6-5 (Chapter 6, Building Construction Administration), (b) Orangetown Zoning Code (Chapter 43) §4.11, §4.12 and §4.13 (Performance Standards), and (c) Zoning Code §10.222, §10.323, §10.334 and §10.335 (Administration and Enforcement), in accordance with the implementing Regulations of the New York State Environmental Quality Review Act (“SEQRA”), found at Title 6, NYCRR, Part 617, the Town Board has determined that this land use action: (i) is subject to SEQRA; (ii) is preliminarily classified as an Unlisted Action;

(iii) only Involves the Town Board, and the Rockland County Department of Planning;

(iv) shall require preparation and submission by the Town Board of Part 1 of the Short Environmental Assessment Form (i.e., “EAF”);

(v) is not located within an Agricultural District;

(vi) shall undergo Coordinated Review pursuant to SEQRA Regulation 6 NYCRR §617.6(b)(3); and

(vii) the Town Board intends, at a future meeting, to adopt a motion to Declare the Town Board as SEQRA Lead Agency in the environmental quality review of this proposed land use action, pursuant to Coordinated Review, as per SEQRA Regulation 6 NYCRR §617.6(b)(2), because the Town Board believes that it is the most appropriate Lead Agency pursuant to the criteria for determining Lead Agency as found at 6 NYCRR §617.6(b)(5)(v).

Therefore, the Town Board hereby Resolves to issue its Notice of Intention to serve as SEQRA Lead Agency, and to transmit said Notice to all Involved Agencies.

Ayes: Councilpersons Valentine, Bottari, Troy, Diviny
Supervisor Day

Noes: None

RESOLUTION NO. 58

**REFERRAL/ROCKLAND COUNTY
PLANNING DEPARTMENT &
ORANGETOWN PLANNING BOARD/
PROPOSED LOCAL LAW/AMENDING
CODE §6-5 CHAPTER 6, BUILDING
CONSTRUCTION ADMINISTRATION;
& ZONING CODE CHAPTER 43,
§4.11,§4.12 §4.13 PERFORMANCE
STANDARDS, & §10.222, §10.323,
§10.334 §10.335 ADMINISTRATION
AND ENFORCEMENT**

Councilman Troy offered the following resolution, which was seconded by Councilman Valentine was unanimously adopted:

RESOLUTION NO. 58 - Continued

RESOLVED, that the Town Board’s consideration of the adoption of a Local Law amending the Code of the Town of Orangetown, Chapter 6, entitled Building Construction Administration, §6-5; and Chapter 43, entitled Zoning, Article IV, §4.1, entitled Performance Standards, and §4.11, §4.12 and §4.13 thereof, and Article X, entitled Administration and Enforcement, §10.222, §10.323, §10.334 and §10.335; is hereby referred to the Rockland County Department of Planning, pursuant to NYS General Municipal Law §239-m, and to the Orangetown Planning Board, pursuant to Orangetown Zoning Code §10.51.

Ayes: Councilpersons Troy, Valentine, Diviny, Bottari
Supervisor Day
Noes: None

RESOLUTION NO. 59

**OPEN/CONTINUATION PH
PROPOSED LOCAL LAW AMENDING
CHAPTER 43, ZONING –
REGULATIONS OF DEVICES IN
PUBLIC RIGHT-OF-WAYS AND
EASEMENTS (*Adjourned from RTBM
12/19/17 Res. 616*)**

Supervisor Day offered the following resolution, which was seconded by Councilman Diviny was unanimously adopted:

RESOLVED, that this public hearing, from December 19, 2017 is hereby opened and continued.

Ayes: Supervisor Day
Councilpersons Diviny, Troy, Valentine, Bottari
Noes: None

Summary of Public Comments:

Rabbi Schiff and Rabbi Pernick, not commenting on content, are very grateful that the Town reached out to the Jewish community, for their comment.

**Chapter Zoning
Article . Other Regulations
§ .Regulation of Devices in Public Right-of-Ways and Easements**

I. GENERAL PROVISIONS

A. Legislative purpose and intent.

(1) The Town Board of the Town of Orangetown, New York (the "Town") finds that uses in the public right-of-ways, easements, and other non-private property areas (collectively the "Areas") impacting upon the traveling and residential public within the Town must be lawfully regulated to protect the public health, safety, and welfare of all residents as well as those traveling and otherwise using the Areas.

(2) The Town also finds that there have been unregulated and unmonitored non• temporary non-utility third-party devices ("Non-Utility Devices") being attached to utility poles owned by utility entities as defined by the New York State Transportation Corporation Law and located in such Areas ("Utility Poles" and "Utility Entities").

(3) The Town also finds that certain Utility Entities have instituted their own process by which they have permitted various Non-Utility Devices on Utility Poles in Areas throughout their area of operations and have applied these processes in a manner that has not been consultative with local municipalities and mayor may not have already have occurred in areas within the Town itself.

REGULATIONS OF DEVICES IN PUBLIC RIGHT-OF-WAYS AND EASEMENTS

(4) The Town Board also finds that Utility Entities have permitted and/or continue to permit the placement of various Non-Utility Devices, inclusive of private security cameras, in Areas throughout the TOWI1, and that such private security cameras present issues dealing with potential unlawful surveillance as well as the invasion of any right or expectation of privacy to individuals traveling in or about the Areas and that regulation of such security cameras and related Non-Utility Devices is essential to secure the public health, safety, comfort, and welfare of the Town's inhabitants.

(5) The Town also finds that certain utility devices are attached to Utility Poles by Utility Entities are used to provide important and necessary public for the transmission of electrical or other currents services (collectively "Utility Devices"), which, if not protected by a covering, could present a public health, safety, or welfare concern to those who may come in contact with such wires or other devices and therefore the regulation of such wires or other devices used for Utility Devices must be distinguished from any wires or devices being utilized only for Non-Utility Devices purposes.

(6) This Regulation is additionally intended to be certain that all uses of the public spaces owned or controlled by the Town are properly assessed and documented at all times under the Real Property Tax Law of the State of New York.

(7) This Regulation s intended also to protect public safety, enhance and protect the physical appearance of the community by avoiding excess unregulated objects in the public space, and promote consistence in the installation of any Devices as set forth herein .

B. Definitions. For the purpose of this Section, the following definition shall apply:

ASSESSOR:

This refers to the Town's Office of Assessor pursuant to Chapter 3 of the Town Code and who is in charge of determining the fair market value of all utility and other similar easements, right-of-ways or other property interests in the Town that are subject to taxation pursuant to the Real Property Tax Law of New York State.

CODE ENFORCEMENT OFFICER:

This refers to the Town's Office of Building, Zoning and Planning Administration and Enforcement pursuant to Chapter 6A of the Town Code and any Code Enforcement Officer, Building Inspector or any Assistant Code Enforcement Officer or Assistant Building Inspector having jurisdiction over the enforcement of any Zoning Codes, Building Codes or other Codes in the Town.

EASEMENT:

An easement is a incorporeal interest in real property.

INSTALLER:

This refers to any individual, entity, company, corporation or others who are hired, volunteer or otherwise are involved with the installation and maintenance of any Non-Utility Devices as defined herein. Said installer shall be appropriately licensed by the County of Rockland Department of Consumer Affairs so that all appropriate insurance and other protections for the public are in place and duly filed with the Town Clerk before any installation, maintenance, and/or other work can be done herein. All such documents with regard to the installer shall be attached to any application for a prior Permit herein.

REGULATIONS OF DEVICES IN PUBLIC RIGHT-OF-WAYS AND EASEMENTS

NON-UTILITY DEVICES:

A permanent non-utility device is anything, object or other physical apparatus to affix to or between a pole or poles, structure or other places, by any nails, clips, fasteners, wire, string or other such object, including but not limited to, lechis, plastic strips, metal, wooden or other material that is used and/or intended to be used for more than 31 consecutive days. This definition excluded cameras.

NON-UTILITY DEVICE - SECURITY CAMERA:

Any equipment affixed in any manner to a Utility Pole Of Utility Device that is used or intended to be used to observe, record, transmit or otherwise monitor the activities of anyone within public right-of-ways Of public easement areas in which any member of the public can be recorded, photographed or otherwise have any image captured which equipment has not been authorized and approved by the Police Department for the Town of Orangetown for law enforcement security purposes.

PERSON:

"Person" means any individual, corporation, partnership, limited liability corporation, joint venture, profit or not-for-profit entity or other person, firm, owner, leasee, agent or employee whether corporate or otherwise.

PERMIT HOLDER:

Permit holder shall include the person or entity making the application, the person or entity to whom the permit is granted and also the owner of the right-of-way or easement or other right or interest within to which any Non-Utility Devices as defined herein is or is proposed to be attached.

RIGHT-OF-WAY:

Any recorded or non-recorded instrument, document or other tangible compilation of data that purports to provide certain rights to utilize any public areas within the streets, highways, side-walks or other similar areas where the public or others may travel upon or utilize at any time, including but not limited to, public and private utility easements.

STREET:

The term "Street" as used herein also includes a highway, road, avenue, roadbeds, lane or alley which the public have a right to use in whole or in part. The term "pavement" includes a macadam, asphalt, brick, concrete or other similarly improved roadbed, and is only applied to the portion of the street between the sidewalks or established curb lines.

UTILITY COMPANY:

This refers to any public or private utility company or other entity that has obtained any rights-of-way or easements to construct, erect or otherwise place utility and/or Utility Devices along any right-of-ways or easement areas within streets or roads of the Town. This shall also refer to any entity that has received a Permit or franchise pursuant to Town Law Section 4-406 and utility entities as defined by the New York State Transportation Corporation Law.

UTILITY POLE:

This refers to utility poles owned by Utility Companies as defined by the New York State Transportation Corporation Law and located in public streets, easements and/or right of ways.

UTILITY DEVICES:

Any material or compilation or flexible or rigid materials that is utilized to actually carry electrical current no matter what voltage and such definition Of wire shall also include any protective outer covering that is utilized in connection with such activity. The word "wire" shall also include any devices used to attach the wire or otherwise convert to the existing wire or wires in the Area and as used and/or installed by a Utility Company.

REGULATIONS OF DEVICES IN PUBLIC RIGHT-OF-WAYS AND EASEMENTS

II. REGULATION OF NON-UTILITY DEVICES -- SECURITY CAMERAS

This Section applies exclusively to Non-Utility Devices - Security Cameras as defined

No Non-Utility Devices - Security Camera shall be erected, maintained, installed or otherwise placed or kept in place on any Utility Pole or in any public right-of-way and easement areas unless said placement and maintenance is at the written direction of the Town of Orangetown Police Department for public security purposes. Without such written direction from the Town of Orangetown Police Department, anyone who installed, places, maintains or otherwise causes such security camera to be so placed shall be guilty of a misdemeanor subject to imprisonment or up to one year and a fine of not more than \$50,000.

III. REGULATION OF NON-UTILITY DEVICES AND UTILITY DEVICES

This Section applies exclusively to Non-Utility Devices and Utility Devices as defined

No Non-Utility Devices and Utility Devices as defined herein shall be installed, maintained, placed, or otherwise continue to exist except as set forth herein:

A. Permit required for Non-Utility Devices.

(1) Except as provided herein, it shall be unlawful for any person to install, erect, move, alter, redesign, enlarge or reconstruct any Non-Utility Devices or cause to be erected, moved, altered, redesigned, enlarged, relocated or reconstructed any Non-Utility Devices without first having obtained a permit from the Building Department to do so. Any such Non-Utility Devices that are to be erected or placed on a pole, building, structure or other location by any person shall be required to have a permit approved by the Town Code Enforcement Officer before any such activity can be commenced. If proposed in connection with a Site Plan Application, such Non-Utility Devices shall also be reviewed and approved by the Planning Board under the applicable criteria.

B. Permit application for Non-Utility Devices.

(1) An Application for a Non-Utility Device shall be made on a form provided by the Town which application shall include at least the following information:

(a) The name, physical and e-mail address and telephone number and all other contact information of applicant.

(b) The location of the pole, building, structure or other location to which or upon which such Non-Utility Devices are to be placed, erected or otherwise attached.

(c) A color photo of the areas where any such Non-Utility Devices are to be erected or attached.

(d) All dimensions of any such Non-Utility Devices, and details of its Devices and hanging or method of securing to any place.

(e) Method of illumination, if any.

(1:) Any markings, including symbols, letters, materials and colors of such Non-Utility Devices.

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(g) Any visual or other message, text, copy or content on or of such Non-Utility Devices.

(h) Written consent and/or a copy of any agreement made with the owner of the property or property interest upon which such Non-Utility Devices are to be erected

(i) Any and all documents by which the owner of the property and property interest referenced herein claims a right to occupy space in areas owned or controlled by the Town.

(i) The names, address and other information of any Utility Company that allows, licenses, permits or otherwise consents to the placement of any such Non-Utility Devices in its claimed right-of-way prior to the tiling of an application herein.

(k) The name, address and all contact information of the Installer as defined herein.

(1) Any other such information as the Building Department or reviewing Board may require to ensure compliance with this Regulation.

(2) The fees for such application are set forth in Chapter __ of this Code. C. Filing of Non-Utility Device Permit Application with Assessor. Upon the filing of an application for Non-Utility Devices permit under this Section with the Town, contemporaneous with said application being filed, an applicant for such Non-Utility Devices permit must also simultaneously file copies of the application with the Town Assessor, the Town Clerk and the Supervisor for the Town. In addition to the contents of the application set forth previously herein, the application shall also contain all documents that confirm the right to have such Non-Utility Devices established or erected in over or under areas owned or controlled by the Town or such other Areas as claimed by the applicant. Said documentation shall also include the identification of any rights that are claimed by the applicant or any owner of the property or property interests upon which such Non-Utility Devices are to be erected to place such Non-Utility Devices in any street or other Areas. Said application shall also include a fair market value determination of the existing rights of the owner of the property or property interest upon which such Non-Utility Devices is to erect and the fair market value of the rights of the Non-Utility Devices permit application if granted. The application shall also include any prior challenges that the owner of the property or property interest upon which such Non-Utility Devices are to be erected previously filed against any Tax Assessor having jurisdiction to review the fair market value of the rights of the OV\11cr of the property or property interest upon which the Non-Utility Devices are to be erected.

D. Non-Utility Device Permit procedure.

(1) Upon the filing of a completed application, the Code Enforcement Officer shall examine the plans, specifications or other information submitted, as well as the Area or Areas where the Non-Utility Devices are to be erected or as the case may exist. If such Non-Utility Devices are in compliance with all the requirements contained in this Regulation, the Code Enforcement Officer shall; within 15 days after completion or his or her review of the permit application, either (a) advise the applicant in writing of any incomplete parts of the application; (b) issue a permit for the erection of the Non-Utility Devices or; (c) deny the application. (The issuance of a permit shall not excuse the applicant from conforming to the other laws, rules and regulations of the municipality.) If the placement of said Non-Utility Devices so authorized pursuant to this regulation has not completed

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within three (3) months from the date of issuance, the permit shall become null and void.

(2) Appeal from permit decision. In accordance with New York Town Law § 7-712-a(4), an appeal to the Town Zoning Board of Appeals may be taken by any person aggrieved by the Code Enforcement Officer's decision to approve or deny a permit within thirty (30) days from the date of any decision.

E. General Installation Regulations for Non-Utility Devices and Utility Devices.

(1) Installation guidelines. The following guidelines are to be followed with regard to any installation of a Non-Utility Devices and Utility Devices pursuant to this Regulation:

(a) Any Non-Utility Devices must be installed entirely within the right-of-way or other Area and outside of any such Town right-of-way or any other right-of-way unless a written consent for use by such applicant is on file with the Town Clerk.

(b) Any such Non-Utility Devices must be located as close as permitted by law, rule or regulation to any other existing wire in the immediate location of such wire.

(c) Any Non-Utility Devices must be of translucent material and/or be the same color as the pole to which it is attached so that such Non-Utility Devices is not visible to the public.

(d) Any Utility Devices shall be painted or otherwise made to be distinguishable in appearance from that of the Utility Pole or other structure upon which the Utility Devices are placed.

(e) Prior to installation of any Non-Utility Devices, a Utility Company mark-out is required with the applicant in the permit application having documented to the Town the 811 call to have this done as well as the results of that call.

(f) No such Non-Utility Device or extension thereof may be attached or fastened to any tree, bush or plant or other vegetation.

(g) No such Non-Utility Device can cross over or under or on a Town roadway or Town right-of-way.

(h) All Non-Utility Devices attached to any Utility Pole must receive written permission from Utility Company or other entity or person from which permission is given and said permission must be attached to any permit application and thereafter submit written proof of continuing permission to Code Enforcement Officer annually by January 15 of each year after which permit is issued.

(2) Installer guidelines. The installer shall follow all guidelines set forth above and shall also follow any such other directions or requirements of the Code Enforcement Officer for the Town.

F. Maintenance for Non-Utility Devices.

(1) The permit holder is responsible at all times to maintain their Devices in a neat and orderly condition, in good working order at all times, and in such manner to prevent any deterioration in the physical appearance or safety of such Devices that could impact on of persons or places nearby such Devices.

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(2) Any such unsafe, unsightly, damaged, or deteriorated Non-Utility Devices, that in danger of falling, shall be put in order or removed with fifteen (15) days as required in any written notice by the Code Enforcement Officer to the permit holder. [f safety conditions so require in special circumstances, then and in that event upon notice to the permit holder immediate compliance is required for the repair or removal of same. If compliance is not achieved within the time period specified in such notice, such Devices shall be repaired or removed by the Town and the costs shall be levied and collected against the permit holder in the same manner and under the same penalties as enforcement of any Town Law, rule or regulation.

(3) All Non-Utility Devices shall maintain all clearances from electrical conductors in accordance with the New York State Public Service Commission's Orders and Regulations as well as the National Electrical Code and from all communications equipment or lines located within the Town. Any such Non-Utility Devices and any supporting structures shall maintain appropriate clearance and must not interfere with any surface or underground facilities and conduits for water, sewage, gas, electricity or communications equipment or lines.

G. Abandoned Non-Utility Devices.

(1) Except as provided in this Regulation, any such Non-Utility Devices that does not meet the standards herein for a period of 30 days or more shall be deemed to have been abandoned. Such abandoned Non-Utility Devices are prohibited and shall be removed immediately by the permit holder and/or Utility Company.

(2) Upon notification by the Town to the permit holder and/or Utility Company of any such abandoned Non-Utility Devices, said permit holder and/or Utility Company shall have 30 days to remove such abandoned Devices. Upon failure to remove the Non-Utility Devices within this time period, the Town may remove the Non-Utility Devices upon the expense of the permit holder and Utility Company. The cost of such removal paid by the Town shall be levied and collected in the same manner and under the same penalties as any other Town Law, rule or regulation assessment of a public improvement.

H. Existing Non-Utility Devices and Nonconforming Non-Utility Devices and/or Utility Devices

(1) Any such Non-Utility Devices not in compliance with any provision of this Regulation upon its effective date shall be deemed nonconforming.

(2) Any such nonconforming Non-Utility Devices shall be reported to the Town Code Enforcement Officer by submission of a permit application in conformance with the requirements of this Regulation and demonstrating the date of installation within ninety (90) days of the date of enactment of this Regulation. If not in compliance within ninety (90) days from the enactment of this regulation, the Non-Utility Devices shall be removed forthwith by the Town and the expense of the same shall be paid by the nonconforming Non-Utility Device and Utility Company.

I. Other Requirements.

(1) Any Permit Holder or Utility Company shall restore and repair any and all damage that may occur in connection with the installation, maintenance or removal of any Non-Utility Devices and/or Utility Devices.

(2) The Permit Holder or Utility Company shall indemnify and hold harmless the Town, its Officials, employees, agents, and others from any claims for personal injury or property damage arising from (or allegedly arising from) or in

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connection with such installation, use, maintenance, or removal of any Non-Utility Devices and/or Utility Devices.

(3) The Permit Holder and the Utility Company shall provide a Certificate of Insurance evidencing liability insurance in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregated listing the Town, its Officials, employees and agents as additional insureds prior to the issuance of a permit for any Non-Utility Device. Such insurance shall be maintained and each and every Certificate of Insurance shall be on file with the Town Clerk at all times that a Non-Utility Device remains in place.

(4) In the event any Permit Holder becomes liable to the Town for any fees, expenses, and/or penalties under this Regulation and fails to remit full and complete payment of said fees, expenses, and/or penalties within 30 days, the owner of the Utility Pole shall be held liable to the Town for any and all amounts remaining due plus 9% interest annum on said amount. By permitting, facilitating, and/or licensing Non-Utility Devices to be installed within the Areas, the owner of the Utility Pole waives all appeals and agrees to be strictly liable for any amounts due to the Town pursuant to this Provision and Regulation.

J. Code Enforcement Officer.

(1) The provisions of this Regulation shall be administered and enforced by the Code Enforcement Officer who shall have the power to undertake any Non-Utility Devices and/or Utility Devices inspections.

(2) No Non-Utility Devices permit shall be approved by the Code Enforcement Officer except in full compliance with the provisions of this Regulation.

K. Appeals.

(1) In accordance with New York State Town Law § 7-712-a, any order, requirement, decision, interpretation, or determination of the Code Enforcement Officer may be appealed within thirty (30) days of the date of the determination by filing an appeal with the Zoning Board of Appeals by any person aggrieved, or by an Officer, Department, Board or Bureau of the Town.

(2) Upon filing an appeal, the Zoning Board of Appeals may grant a variance from the terms of this Regulation, following the procedure set forth in Town Law.

(3) Any person aggrieved by a decision of the Zoning Board of Appeals may have that decision reviewed by the Supreme Court of the State of New York in the manner and within the time provided by law.

L. Penalties for Offenses.

(1) In the event of a breach of any of the provisions of this Regulation, the Code Enforcement Officer shall notify the permit holder and Utility Company in writing to remove, repair, or otherwise bring the Non-Utility Devices and/or Utility Devices into conformance within 30 days of the date of such notice. Upon failure to comply with any such notice within the prescribed time, the Code Enforcement Officer shall remove or cause the removal, repair, or conformance of Non-Utility Devices and/or Utility Devices at the expense of the permit holder and Utility Company. All costs and expenses shall become a lien upon the premises upon which the wire is or was located and shall be levied and collected in the same manner and under the same penalties as any other Town Law, rule or regulation.

(2) Any person who violates any of the provisions of this Regulation or who fails to comply with any order or regulation made herein, or who erects, moves, or

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alters any Non-Utility Devices and/or Utility Devices in violation of any statement or plans submitted by the applicant and approved under provisions of this Regulation, shall be guilty of a violation as the same is defined in the Penal Law and shall be fined \$1,500 for each and every violation and also be subject to imprisonment of a term of not more than ten (10) days. Each day that such violation is permitted to exist shall constitute a separate violation. If any Non-Utility Devices and/or Utility Devices is erected, altered, or moved in violation of the provisions of this Regulation, any Town Official may, in addition to other remedies, take appropriate other actions to prevent such unlawful condition from continuing to exist.

(3) All costs and expenses incurred by the town in causing the removal or repair of any Non-Utility Devices and/or Utility Devices as specified in this section and the enforcement of this Regulation, including but not limited to reasonable attorneys' fees, shall be collected from the permit holder and Utility Company. Payment shall be made in not less than five days after transmittal to the permit holder and the Utility Company of a written demand for payment. Upon failure to make such payment, such costs and expenses shall be assessed against said permit holder and the Utility Company and shall be paid and collected as part of the Town tax next due and payable. In addition, the town may commence any other action or proceeding to collect such costs and expenses. With all said reasonable attorney's fees incurred by the Town being paid by the Permit Holder and the Utility Company.

RESOLUTION NO. 60

CONTINUE PH/PROPOSED LOCAL LAW AMENDING CHAPTER 43, ZONING – REGULATIONS OF DEVICES IN PUBLIC RIGHT-OF-WAYS AND EASEMENTS

Councilman Diviny offered the following resolution, which was seconded by Councilman Troy was unanimously adopted:

RESOLVED, that the public portion is hereby continued on April 10, 2018 at 8:15 pm.

Ayes: Councilpersons Diviny, Troy, Valentine, Bottari
Supervisor Day
Noes: None

RESOLUTION NO. 61

LEAD AGENCY STATUS / PROPOSED LOCAL LAW AMENDING CHAPTER 43, ZONING – REGULATIONS OF DEVICES IN PUBLIC RIGHT-OF-WAYS AND EASEMENTS

Supervisor Day offered the following resolution, which was seconded by Councilman Troy was unanimously adopted:

WHEREAS, the Town Board for the Town of Orangetown ("Town Board") seeks to adopt a proposed local law ("Local Law") to amend Chapter 43 of the Town of Orangetown Town Code entitled the "Regulation of Devices in Public Right-of-Ways and Easements of the Town of Orangetown" ("Town"); and

WHEREAS, the proposed Local Law is an amendment to the Town Zoning Code involving a change of use affecting more than twenty-five (25) acres, and is thereby determined to be a Type I action; and

WHEREAS, the Town Board desires to assume Lead Agency status and conducted a review to determine the significance of the proposed Local Law in accordance with the Article 8 of the Environmental Conservation Law of the State of New York, and the regulations promulgated thereunder at 6 NYCRR 617 ("SEQRA"); and

RESOLUTION NO. 61 - Continued

WHEREAS, SEQRA and the governing regulations promulgated thereunder requires the Town Board to serve a Notice of Intent to Establish Lead Agency to all potentially involved or interested Agencies; and

WHEREAS, Public Hearings on the proposed local law have been noticed and held on December 19, 2017, and February 6, 2018 to provide an opportunity for all persons interested in presenting oral or written comments concerning the proposed Local Law.

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1. All "**WHEREAS**" clauses are hereby incorporated by reference and set forth in full herein.

Section 2. The Town Board determines that the proposed action will require reviewed pursuant to the State Environmental Quality Review Act ("SEQRA"), and the governing regulations promulgated thereunder.

Section 3. The Town Clerk is hereby authorized and directed to serve by mail the Notice of Intent to Establish Lead Agency to all potentially involved or interested Agencies.

Section 4. This Resolution shall be effective immediately.

The question of adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Ayes: Supervisor Day
Councilpersons Troy, Diviny, Valentine, Bottari
Noes: None

RESOLUTION NO. 62

**REFERRING/ ORANGETOWN
PLANNING BOARD/AMENDMENT
CHAPTER 43, ZONING –
REGULATIONS OF DEVICES IN
PUBLIC RIGHT-OF-WAYS AND
EASEMENTS**

Councilman Valentine offered the following resolution, which was seconded by Councilman Diviny was unanimously adopted:

WHEREAS, the Town Board for the Town of Orangetown ("Town Board") seeks to adopt a proposed local law ("Local Law") to amend Chapter 43 of the Town of Orangetown Town Code entitled the "Regulation of Devices in Public Right-of-Ways and Easements of the Town of Orangetown" ("Town"); and

WHEREAS, Section 10-51 of the Town Code requires that proposed amendments to Chapter 43 be referred to the Town of Orangetown Planning Board ("Planning Board"); and

WHEREAS, upon referral, the Planning Board may submit a written report in accordance with the Town Code to the Town Board and shall be submitted within thirty (30) days after the effective date of this Resolution; and

WHEREAS, the failure of the Planning Board to make any such report within the thirty (30) day period shall be deemed a favorable report in accordance with the Town Code.

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1. All "**WHEREAS**" clauses are hereby incorporated by reference and set forth in full herein.

RESOLUTION NO. 62 - Continued

Section 2. The Town Clerk is hereby authorized and directed to refer the proposed local law entitled the "Regulation of Non-Utility Devices in Public Right-of-Ways and Easements" to the Town of Orangetown Planning Board pursuant to Article X of the Town Code of the Town of Orangetown.

Section 3. This Resolution shall be effective immediately.

Ayes: Councilpersons Valentine, Diviny, Troy, Bottari
Supervisor Day
Noes: None

RESOLUTION NO. 63

**ENTER EXECUTIVE SESSION
MATTERS RELATED TO SPECIFIC
PERSONNEL**

In attendance, at this Executive Session, were Supervisor Day, Councilpersons Troy, Diviny, Valentine and Bottari, Mike Lawler, Amanda Hyland, John Edwards, and Teresa Kenny.

Supervisor Day offered the following resolution, which was seconded by Councilman Troy was unanimously adopted:

RESOLVED, at 9:16 p.m., the Town Board entered Executive Session to discuss matters related to specific personnel.

Ayes: Supervisor Day
Councilpersons Troy, Diviny, Valentine, Bottari
Noes: None

RESOLUTION NO. 64

**RE-ENTERED
WORKSHOP/ADJOURNED**

Supervisor Day offered the following resolution, which was seconded by Councilman Valentine and was unanimously adopted:

RESOLVED, at 10:20 pm, the Town Board re-entered the Workshop and adjourned in memory Jack Lovett, former Orangetown Supervisor and father of employee, Pete Lovett and Josephine Saltarelli, mother of employee Mary Ferrara.

Ayes: Supervisor Day
Councilpersons Valentine, Troy, Diviny, Bottari
Noes: None

Charlotte Madigan, Town Clerk